classifications or services...". The FCC has failed to properly consider this provision. [4]

Paragraph 664 of the TRO fails to understand that the world has changed and section 202 must be considered in this competitive environment. The discrimination language of 202 must be applied to the relationship between the BOC and a CLEC, not just between purchasing CLECs. The prohibition against discrimination means that the BOC cannot discriminate against the CLEC in pricing 271 elements. These elements are the same elements the BOC uses in its business. To meet the requirements of 202, the BOC cannot treat its competitive, wholesale customer any differently than it treats itself.

The Anti-Discrimination provision requires that the costs the BOCs use for loops and transport be included in the discrimination analysis. In other words, BOCs cannot charge CLECs any more for network elements than BOCs charge themselves. Or, to say it another way, whatever BOCs charge CLECs for network elements BOCs must also charge themselves.

BOCs have internal cost numbers that they use to set prices, determine margins, etc. These numbers are readily discoverable and become an easy basis for doing 271 pricing. This is the only way to apply the anti-discrimination provision of 202 in an environment where the company doing the pricing is also competing with the companies doing the buying.

Consider it this way: BOC costs cannot be as high as special access rates. There are no products or services where BOC retail revenue is covering special access rates. So, special access rates are greater than BOC costs, which means special access rates are discriminatory.

"Special Access" is an historical concept with no role in today's competitive telecom marketplace. Today in the Telecom world, buyers of network elements must purchase them from sellers who are also using the same elements to compete with the buyers. There are two ways to purchase those elements: as unbundled network elements at TELRIC rates with a showing of impairment under section 251; or, as section 271 network elements purchased at "just and reasonable" rates that must not be discriminatory.

Whether pricing is done at TELRIC or at just, reasonable, and non-discriminatory rates, there is no room in the equation for "special access" rates. Under just, reasonable, and non-discriminatory rates, a seller must not charge its buyer/competitor any more for a product than it charges itself. Competitors should not even be discussing the existence of "special access" rates. There is no such thing for

[4] As the USTA II decision points out, the FCC's decision that 271 elements need not be combined by the BOC has not been scrutinized under the nondiscrimination requirement of section 202. The FCC seems to be applying sections 201 and 202 in the manner of days gone by, days of BOC monopoly status. The nondiscrimination requirement is critical in this new era where those doing the pricing are also competing with those doing the buying.

competitors. Rates are either TELRIC as impaired UNEs or the same cost as the BOC charges itself as 271 elements under sections 201 and 202 of the Communications Act. If a non-competitor like a large, private customer wishes to purchase network elements, a BOC may be able to charge "special access" rates. This, of course, is not a Telecom Act issue. But, today, as between competitors under the Telecom Act, there is no room for "special access" rates. This historical vestige should be eliminated from Telecom Act vocabulary.

E. Consistent With Pricing Schemes in the 1996 Telecom Act, the FCC Should Establish the Methodology and the States Should Implement It.

Instead of making 271 pricing decisions on a case-by-case basis, the FCC should establish the methodology to be utilized and then ask state Commissions to determine the actual pricing. The methodology should be any one of the following three choices: The actual prices for network elements when the BOC received 271 approval; TELRIC, the methodology in place when the BOC's received the benefit of long distance approval; or BOC's must charge themselves for network elements what they charge CLECs. State commissions should then implement the FCC chosen pricing methodology through State proceedings.

This is consistent with the handling of pricing issues under the 1996 Act, and acknowledges the expertise and local knowledge of state commissions. There is no legal or policy basis for moving away from this well-established process.

Date: September 30, 2004

Integra Telecom

By _____

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Appendix A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	**WC Docket**
Unbundled Access to	)	**No. 04-313**
Network Elements	)	
	)	
Review of the	)	
Section 251 Unbundling Obligations	)	**CC Docket**
For Incumbent Local Exchange	)	**No. 01-338**
Carriers	)	

Affidavit of Dudley Slater

1. My name is Dudley Slater. I am the Chief Executive Office and co-founder of Integra Telecom, a competitive local exchange carrier headquartered in Portland, Oregon.

2. I co-founded the company in 1996 as a direct response to the 1996 Telecom Act.

3. I believed from the very beginning that true competition required a competitive carrier like Integra Telecom to own and operate its own equipment. Based on that belief, Integra Telecom has invested approximately $300 hundred million dollars in switches, other infrastructure, and start-up costs. Though Integra has some UNE-P lines (less than 5%), the company has not relied on UNE-P for its market success.

4. Integra does business in five states (Oregon, Washington, Utah, Minnesota, and North Dakota), employing more than 600 people.

5. Integra Telecom has grown markedly as the marketplace embraces Integra's products and services. The company has grown from 3,800 access lines in 1996 to 73,000 in 2000 to over 200,000 today. The company receives no federal or state universal service support.

6. Integra's target market is small to medium sized business customers. The average Integra retail business customer has eight access lines at one location, generating less than $400 per month in revenue.

7. Since Integra's entry into the Telecom marketplace, retail prices offered by Integra for small to medium sized business customers have fallen on average approximately 5% per year.

8. Integra has its own data network and has plans to deploy a VOIP offering to residential and small to medium sized business customers. This facilities-based deployment will not be possible without access to ILEC loops and transport.

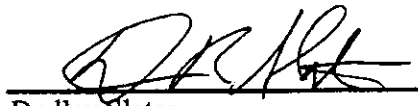
9. ELI's public stock was or expected to be de-listed prior to the parent company taking ELI private. It was trading at substantially depressed values resulting in the actual or anticipated de-listing.

10. Integra has invested over $20 million in capital and 4 years of time in the Washington market. Based on the current cash generated from operations from this market, it would take Integra approximately 10 years to recover a further investment of $52 million. Spending an additional $52 million in this market would cause a default under Integra's loan agreement and impair the ability of its shareholders to ever realize a return on their investment.

11. If Integra were forced to move all Transport costs from TELRIC to special access, the economic impact would be approximately $880,000 per month, causing, in isolation, a prospective default under Integra's loan agreement and effectively destroying the company.

12. If Integra were required to replace its $5 million investment in optronics and strand the existing investment, the replacement of these optronics, if funded at one time, would, in isolation, cause a default under Integra's current credit agreement with its lenders.

Dated:



Dudley Slater
Chief Executive Officer
Integra Telecom

Appendix B

Integra Telecom Service areas, by ranking in the 100 largest Metropolitan Statistical Areas

Oregon
Portland-28
Eugene-not in top 100
Salem-not in top 100
McMinnville-not in top 100

Washington
Seattle-19
Tacoma-76
Everett-not in top 100

Utah
Salt Lake City/Ogden-46
Provo-not in top 100
Park City-not in top 100

North Dakota
Fargo-not in top 100
Grand Forks-not in top 100

Minnesota
Minneapolis-St. Paul-13
Duluth-not in top 100
St. Cloud-not in top 100
Brainerd-not in top 100
Baxter-not in top 100
Nisswa-not in top 100
Little Falls-not in top 100
Moorhead-not in top 100

Out of a total of 20 service areas, only five are in the top 100 MSAs. The average ranking for the five in the top 100 is 36.

Census 2000 PHC-T-2. Ranking Tables for States: 1990 and 2000

Table 1. States Ranked by Population: 2000

Note: 1990 populations shown in this table were originally published in 1990 Census reports and do not include subsequent revisions due to boundary or other changes.

Source: U.S. Census Bureau

Internet Release date: April 2, 2001

For information on confidentiality protection, sampling error, nonsampling error, and definitions, see ***http://factfinder.census.gov/home/en/datanotes/expplu.html***.

Rank	Area	Census Population		Change, 1990 to 2000	
		April 1, 2000	April 1, 1990	Numeric	Percent
1	California	33,871,648	29,760,021	4,111,627	13.8
2	Texas	20,851,820	16,986,510	3,865,310	22.8
3	New York	18,976,457	17,990,455	986,002	5.5
4	Florida	15,982,378	12,937,926	3,044,452	23.5
5	Illinois	12,419,293	11,430,602	988,691	8.6
6	Pennsylvania	12,281,054	11,881,643	399,411	3.4
7	Ohio	11,353,140	10,847,115	506,025	4.7
8	Michigan	9,938,444	9,295,297	643,147	6.9
9	New Jersey	8,414,350	7,730,188	684,162	8.9
10	Georgia	8,186,453	6,478,216	1,708,237	26.4
11	North Carolina	8,049,313	6,628,637	1,420,676	21.4
12	Virginia	7,078,515	6,187,358	891,157	14.4
13	Massachusetts	6,349,097	6,016,425	332,672	5.5
14	Indiana	6,080,485	5,544,159	536,326	9.7
15	Washington	5,894,121	4,866,692	1,027,429	21.1
16	Tennessee	5,689,283	4,877,185	812,098	16.7
17	Missouri	5,595,211	5,117,073	478,138	9.3
18	Wisconsin	5,363,675	4,891,769	471,906	9.6
19	Maryland	5,296,486	4,781,468	515,018	10.8
20	Arizona	5,130,632	3,665,228	1,465,404	40.0
21	Minnesota	4,919,479	4,375,099	544,380	12.4
22	Louisiana	4,468,976	4,219,973	249,003	5.9
23	Alabama	4,447,100	4,040,587	406,513	10.1
24	Colorado	4,301,261	3,294,394	1,006,867	30.6
25	Kentucky	4,041,769	3,685,296	356,473	9.7
26	South Carolina	4,012,012	3,486,703	525,309	15.1
27	Oklahoma	3,450,654	3,145,585	305,069	9.7
28	Oregon	3,421,399	2,842,321	579,078	20.4
29	Connecticut	3,405,565	3,287,116	118,449	3.6
30	Iowa	2,926,324	2,776,755	149,569	5.4
31	Mississippi	2,844,658	2,573,216	271,442	10.5
32	Kansas	2,688,418	2,477,574	210,844	8.5
33	Arkansas	2,673,400	2,350,725	322,675	13.7
34	Utah	2,233,169	1,722,850	510,319	29.6
35	Nevada	1,998,257	1,201,833	796,424	66.3
36	New Mexico	1,819,046	1,515,069	303,977	20.1
37	West Virginia	1,808,344	1,793,477	14,867	0.8

38	Nebraska	1,711,263	1,578,385	132,878	8.4
39	Idaho	1,293,953	1,006,749	287,204	28.5
40	Maine	1,274,923	1,227,928	46,995	3.8
41	New Hampshire	1,235,786	1,109,252	126,534	11.4
42	Hawaii	1,211,537	1,108,229	103,308	9.3
43	Rhode Island	1,048,319	1,003,464	44,855	4.5
44	Montana	902,195	799,065	103,130	12.9
45	Delaware	783,600	666,168	117,432	17.6
46	South Dakota	754,844	696,004	58,840	8.5
47	North Dakota	642,200	638,800	3,400	0.5
48	Alaska	626,932	550,043	76,889	14.0
49	Vermont	608,827	562,758	46,069	8.2
(NA)	District of Columbia	572,059	606,900	-34,841	-5.7
50	Wyoming	493,782	453,588	40,194	8.9
(NA)	United States	281,421,906	248,709,873	32,712,033	13.2

Source: U.S. Census Bureau, Census 2000 Redistricting Data (P.L. 94-171) Summary File and 1990 Census.

Appendix C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	**WC Docket**
Unbundled Access to	)	**No. 04-313**
Network Elements	)	
	)	
Review of the	)	
Section 251 Unbundling Obligations	)	**CC Docket**
For Incumbent Local Exchange	)	**No. 01-338**
Carriers	)	

Affidavit of John Nee

1. My name is John Nee. I am the Vice President of Marketing for Integra Telecom.

2. In my capacity as the Vice President of Marketing, I contracted with Riley Research Associates to conduct a statistically valid survey of businesses in Integra's target market. The purpose of the survey was to identify businesses that are within Integra's target market, with 96 or fewer access lines at one location, and ask them to identify their local exchange carrier. The survey was conducted in the five largest MSA's in which Integra does business: Portland/Vancouver, Seattle/Bellevue/Everett, Tacoma, Salt Lake City/Ogden, and Minneapolis/St. Paul. All business surveyed were located in rate centers in which Integra competes. The businesses were pulled at random by Riley, with a goal of having 400 complete surveys in each MSA . A total of 1,944 businesses responded to the survey. The methodology and results are attached as Exhibit A.

3. The following companies were identified by businesses as being a current local telephone service provider: Qwest, Integra, Verizon, AT&T, Eschelon, McLeod, Allegiance, Popp, ATG, Comcast, MCI, XO Communications, Sprint, US Link, Century Tel, ELI, and Tel West.

4. None of the carriers identified in the independent survey is a satellite or wireless provider. Only one cable company appears in the survey but it has a statistical insignificant market share, 1%, or 20 of 1,944 customers, 10 of whom were in the State of Washington. I reviewed Comcast's tariffs for the state of Washington (tariffs are not required to be filed by CLECs in the state of Oregon) and Comcast does not appear to have a tariffed business offering. Qwest, Verizon, and Century Tel are all ILECs. Every other local service provider is a wire-line CLEC or ILEC.

5. Also attached to my Affidavit is Exhibit B, a survey of customers who left Integra Telecom, conducted under my supervision and control. Each customer was selected randomly and asked to identify the carrier it went to upon leaving Integra Telecom. The carriers identified are Qwest, Eschelon, US Link, McLeod, Verizon, Integra, Popp, XO, and Allegiance. None of the companies identified in the internal survey is a cable, satellite, or wireless carrier. They are all telecom wire-line CLECs or ILECs.

6. Exhibit C to my affidavit is a chart showing the percentage of Integra's business customers with a certain number of access lines at one location. As the chart shows, 99.8% of Integra's retail business customers have fewer than 96 access lines at one location.

7. Exhibit D to my affidavit is a chart showing the number of companies in each of seven key markets that fall within the small to medium sized businesses targeted by Integra. The data is produced by Dunn & Bradstreet. The chart shows the total number of companies in a given market and the number of companies that have fewer than 100 access lines at one location. Business customers with fewer than 100 access lines at one location are Integra's target market. The chart allows the reader to understand that Integra's customer base is wide-spread, ubiquitous, with customer's literally located on every point of the ILEC network. Integra customers are not concentrated in large buildings or in new developments. For example, 94% of the businesses located in the Portland, OR/Vancouver, WA market area are potential Integra customers. To serve these customers, Integra needs access to all loops and transport in a given market, not just to selected loops and transport.

Dated: 9/30/04

John Nee, Vice President of Marketing, Integra Telecom

EXHIBIT A

INTRODUCTION

In order to determine its current market share in the industry, compared to Qwest and other competitors, Integra Telecom asked Riley Research Associates to conduct a market study in five key Regions / MSA's.

Specifically, the project goal was to:

- Quantify current levels of market share across the industry
- Measure customer satisfaction levels across the industry to confirm previous indications that Integra is excelling in terms of service, compared to its competitors
- Measure market-wide awareness of Integra

METHODOLOGY

Riley Research Associates, with input from Integra, designed the questionnaire and sampling plan to accomplish the above goal. The stratified sampling plan was designed to ensure a high level of accuracy on a regional basis. A total of 1,944 interviews were conducted, providing an overall margin-of-error of +/-2.2% at a 95% level of confidence. The five regions / MSA's were stratified as follows (at a 95% level of confidence):

Region / MSA	Sample	Margin-of-error
Portland-Vancouver, OR-WA	389	+/-4.97%
Seattle-Bellevue-Everett, WA	390	+/-4.96%
Tacoma, WA	387	+/-4.98%
Salt Lake City-Ogden, UT	389	+/-4.97%
Minneapolis / St. Paul, MN	389	+/-4.97%
Total	1,944	+/-2.20%

The sampling process began by limiting it geographically, based on the aforementioned MSA's. We then eliminated all area codes and prefixes in which Integra did not compete, based on its rate centers. From that universe of businesses, we randomly selected approximately 5,000 businesses per MSA, which subsequently became our call list.

All interviews were conducted in a "blind" fashion, meaning that respondents did not know on whose behalf we were calling. Fielding took place between August 3rd and August 13th, 2004. Interviewers spoke with respondents between 8:00 a.m. and 4:30 p.m., PDT.

The sample taken for this poll was representative of the overall market – 75% of businesses polled have fewer than 10 employees at their location and 77% have annual sales volumes of $2.5 million or less.

A copy of the questionnaire follows the report in the Appendix, and cross tabulations are contained in a separate document. Only those differences between market subsegments found to be statistically significant are cited in the body of the report.

RESULTS

Q1. First off, how many phone lines do you currently have at your location, including phone, fax, and DSL lines?

When asked how many phone lines their business had at their location, respondents in Seattle provided the highest mean (9.3), followed by Minneapolis / St. Paul (8.0), Portland (7.4), Salt Lake City (5.9), and Tacoma (4.6).

If you examine the average (mean) number of lines per customer on a provider basis, you find that AT&T has the largest number of lines per customer (12.9), followed by Integra (6.4), Eschelon (6.2), Qwest (5.5), McLeod (4.2), and Verizon (3.9).

	Portland	Seattle	Tacoma	Salt Lake	Minneapolis/ St. Paul
Total Participants	389	390	387	389	389
1	18%	10%	18%	14%	16%
2	23	18	25	25	21
3	17	17	17	15	16
4	14	12	14	12	13
5	7	10	7	8	7
6	5	9	4	7	7
7-10	9	13	7	8	12
11-20	4	5	4	6	4
Over 20	3	5	2	4	3
Refused / No answer	-	1	1	0	-
Mean (lines)	7.4	9.3	4.6	5.9	8.0